

9-1-2002

## Human Trafficking: Criminalization of Victims in the Sex Industry

Wendy M. Gonzalez

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bwlj>



Part of the [International Law Commons](#), and the [Law and Gender Commons](#)

---

### Recommended Citation

Gonzalez, Wendy M. (2002) "Human Trafficking: Criminalization of Victims in the Sex Industry," *Buffalo Women's Law Journal*: Vol. 11 , Article 5.

Available at: <https://digitalcommons.law.buffalo.edu/bwlj/vol11/iss1/5>

This International Watch is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Women's Law Journal by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

# HUMAN TRAFFICKING: CRIMINALIZATION OF VICTIMS IN THE SEX INDUSTRY

BY WENDY M. GONZALEZ

Despite a growing effort by government officials and non-governmental organizations, human trafficking perseveres as a mounting crisis in many countries. An estimated two million women and children are trafficked every year.<sup>1</sup> Traffickers lure women into forced prostitution by making false promises of employment as models, dancers, waitresses, nannies, and seamstresses.<sup>2</sup> Some women consent to work in the sex industry without knowing the true working conditions, however, other women are kidnapped and/or drugged, while others are sold by their parents or husbands.<sup>3</sup> To maintain control of the victims, traffickers use coercive tactics, such as deception, fraud, intimidation, isolation, threat, physical force, and debt bondage.<sup>4</sup> In many countries, law enforcement agencies often neglect trafficked victims.<sup>5</sup> At times, law enforcement agencies further enable human trafficking by “act[ing] in collusion with pimps or

---

<sup>1</sup> Joyce M. Davis and Nomi Morris, *Trafficking in Women is a Worldwide Problem*, Knight Ridder Newspapers, at [http://www.realcities.com/mld/kriwashington/news/special\\_packages/2606247.htm](http://www.realcities.com/mld/kriwashington/news/special_packages/2606247.htm). Estimate by the Central Intelligence Agency (CIA) in the United States. [hereinafter Davis]. See also Janice G. Raymond, Jean D’Cuhan, Siti Ruhaini Dzuhayatin, H. Patricia Hynes, Zoraida Ramirez Rodriguez, and Aida Santos, *A Comparative Study of Women Trafficked in the Migration Process, Coalition Against Trafficking of Women*, 1 (2002), at [www.catwinternational.org](http://www.catwinternational.org). [hereinafter Raymond].

<sup>2</sup> Kelly E. Hyland, *Protecting Human Victims Of Trafficking: An American Frame Work*, 16 Berkeley Women’s L.J. 29, 39 (2001). [hereinafter Hyland].

<sup>3</sup> *Id.*

<sup>4</sup> Human Rights Watch, *Women’s Rights: Trafficking*, at [www.hrw.org/women/trafficking.html](http://www.hrw.org/women/trafficking.html). See also Shelley Case Inglis, *Expanding International And National Protections Against Trafficking For Forced Labor Using A Human Rights Framework*, 7 Buff. Hum. Rts. L. Rev. 55, 67-71 (2001) [hereinafter Inglis].

<sup>5</sup> Sarah Shannon, *Prostitution and the Mafia: the Involvement of Organized Crime in the Global Sex Trade*, in *Illegal Immigration and Commercial Sex*, at 125 (Phil Williams ed. 1999) (1999). [hereinafter Shannon].

organized figures” by accepting bribes, falsifying documents and providing protection.<sup>6</sup> Moreover, in some instances, law enforcement agents have threatened the escaped victims’ families for repayment or returned the victims to the traffickers.<sup>7</sup>

There are many factors that account for trafficking and enslavement of women into the sex industry. According to Raymond et. al., there are five main structural factors responsible for the increase in sex trafficking worldwide: economic policies, globalization of the sex industry, male demand, female supply based on women’s inequalities, racial myths and stereotypes, and military presence.<sup>8</sup> Many studies suggest that poverty makes women vulnerable to trafficking because of lack of education and knowledge, lack of job opportunities and absence of government protection.<sup>9</sup> In search of a “better life” women fall into the false promises of traffickers, and families are driven to sell their children.<sup>10</sup>

Restrictive immigration policies may also contribute to the increase in human trafficking by reducing the availability of legal migrant work. Consequently, there is an increase in the reliance on illegal immigration and, therefore, women are more vulnerable to trafficking.<sup>11</sup> Some countries, like Switzerland, allow special work permits for “cabaret dancers,” to work and live in the country

---

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Raymond *supra* note 1, at 2-3. Female Supply based on Women’s Inequalities refers to “gender based social and economic inequalities” in the supply of women as well as “expectations and myths of women’s sexuality, the cultural sexual objectification and commodification of women,” and history of abuse.

<sup>9</sup> See Hyland *supra* note 2 at 35-36.

<sup>10</sup> *Id.*

<sup>11</sup> Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, Special Rapporteur, Commission of Human Rights, Economic and Social Council E/CN.4/2000/68 (February 26, 2000), 21, at [http://193.194.138.190/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2002.83.Add.1.En?Opendocument](http://193.194.138.190/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2002.83.Add.1.En?Opendocument).

for a limited period of time.<sup>12</sup> When traffickers are unable to bring their victims by legal means into the country, they increase their efforts for illegal trafficking including falsifying documents and illegal travel through the borders.

When unbearable cases of abuse or murder occur, some countries are pressured to stop the trafficking. These countries impose more criminal sanctions and execute raids on known sites used by traffickers, such as a brothel in the red-light district of Phnom Penh, Cambodia.<sup>13</sup> In the United States not only have authorities arrested individuals for human trafficking, but also authorities have uncovered organized criminal groups who traffic women and children into the country.<sup>14</sup>

What happens to these young women and girls after they are rescued? In many countries trafficked victims are treated as illegal aliens and/or criminals. Countries distinguish between those victims who they deem as “innocent” and those victims they effectively blame and punish for being trafficked.<sup>15</sup> The distinction is between those women who willingly enter the business and those who are kidnapped or taken without consent. Such distinctions do not alleviate the trafficking of women, but further the trafficking and abusive treatment of women in the sex

---

<sup>12</sup> IHF Report 2001, Focus: Women’s Rights (Trafficking in Women) (Switzerland), at [www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Switzerland.pdf](http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Switzerland.pdf).

<sup>13</sup> *Cambodia: Young Trafficking Victims Treated as Criminals*, Human Rights News, New York, June 22, 2002). [hereinafter Cambodia]. See also *United States Country Report: Anti-trafficking Activities*, United States Mission to OSCE, PC. DEL/702/02, September 12, 2002; MATP, *Cambodian Judge Jails Rescued Sex Slaves*, The Daily Telegraph (Sydney) August 7, 2002.

<sup>14</sup> See Coalition Against Trafficking of Women, *Factbook: United States Trafficking*, at <http://www.catwinternational.org/fb/usa1.html>. The Factbook website describes several instances where trafficked women have been rescued recorded in newspaper articles.

<sup>15</sup> Widney Brown, *A Human Rights Approach to the Rehabilitation and Reintegration into Society of Trafficked Victims*, “21st Century Slavery - The Human Rights Dimension to Trafficking in Human Beings” Conference in Rome, Italy on May 15-16; at <http://www.hrw.org/backgrounder/wrd/trafficked-victims.htm>.

industry. While few traffickers are arrested, convicted, and imprisoned for only a few months, the victims are imprisoned and deported before they can testify against the traffickers.<sup>16</sup> In Japan, trafficked victims, mostly from Thailand, are detained and deported as illegal aliens and are further punished by an imposition of a five-year ban on reentering the country.<sup>17</sup>

In a recent raid in Cambodia, authorities from the Minors Protection Section of the Anti-Trafficking Unit at the Ministry of Interior, which conducted the rescue operation, arrested fourteen Vietnamese girls at a nongovernmental organization, which sheltered them.<sup>18</sup> After arresting and charging them for illegal entry under immigration laws, the girls were imprisoned.<sup>19</sup> Although three girls were released on bail, the charges were not dropped.<sup>20</sup> According to the judge, once it was determined that the girls entered Cambodia without proper identification, they were considered violators of the immigration laws, rather than victims of trafficking.<sup>21</sup> Even though traffickers procure the illegal documents without the knowledge or consent of the women, the women are the ones held accountable for the illegal documentation.

Other countries prosecute the victims under prostitution related charges. In one instance in Bosnia-Herzegovina, the victims were arrested and imprisoned for thirty days after

---

<sup>16</sup> See Davis, *supra* note 1, where the trafficker was sentenced to 33 months after the prosecutors were not able to get any of the victims to testify because they had been deported.

<sup>17</sup> Shannon, *supra* note 5.

<sup>18</sup> Cambodia, *supra* note 13.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Under Cambodian law, the trafficking of human beings by any means for the purpose of sexual exploitation is a crime, regardless of whether the victim consents. Brothel owning and pimping are also crimes under the law subject to strong penalties, especially if the victims are children or are from a foreign country.

testifying against their traffickers.<sup>22</sup> Another woman was charged with using false documents after testifying against the trafficker, the judge refused to accept that as a victim she should not be prosecuted.<sup>23</sup> Even as a country that supports and promotes women's rights, Canada still charges victims with prostitution and treats the women as criminals as evident in Project Orphan of 1997, where twenty-three Thai and Malaysian women were rescued after a mass raid on a massage parlor.<sup>24</sup> They were then arrested and charged with prostitution related charges even though they were considered victims.<sup>25</sup> In another instance, Canadian officials in December of 1998, charged and prosecuted 53 women with prostitution and immigrant violations based on their findings of "contracts."<sup>26</sup> Women were forced to work off their \$40,000 debt while being sold for about \$16 -\$25,000 to perform sexual acts.<sup>27</sup> Canadian authorities insisted that because some of the women had agreed to work in the sex industry in exchange for passage, "they knew exactly what they were getting into."<sup>28</sup>

Women are not only chastised in the countries where they are trafficked but are also chastised in their countries of origin. When the women are able to return to their home countries, their families, potential employers and their governments perceive them as prostitutes and not as victims. Furthermore, the women are at risk for being recaptured, abused and trafficked again by the same

---

<sup>22</sup> Human Rights Watch, *Hopes Betrayed: Trafficking Of Women And Girls To Post-Conflict Bosnia And Herzegovina For Forced Prostitution*, Vol. 14(9)(D), November 2002, at <http://www.hrw.org/reports/2002/bosnia/>.

<sup>23</sup> *Id.*

<sup>24</sup> Noulmook Suthibhasilp, Lillian Petroff, Dora Nipp, *Trafficking In Women, Including Thai Migrant Sex Workers, In Canada, The Toronto Network Against Trafficking in Women, The Multicultural History Society of Ontario, The Metro Toronto Chinese and Southeast Asian Legal Clinic*, Prepared for the Status of Women Canada, June 2000, available at [http://citd.scar.utoronto.ca/MHSO/Trafficking\\_women.pdf](http://citd.scar.utoronto.ca/MHSO/Trafficking_women.pdf).

<sup>25</sup> *Id.*

<sup>26</sup> Coomaswamy, *supra* note 11 at 21.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

traffickers or being victimized by their rescuers.<sup>29</sup> One egregious case involved twenty-five Burmese women who were kidnapped and sold into prostitution in Thailand in 1993.<sup>30</sup> When they were sent back to Burma, health officials injected them with cyanide because they had contracted HIV and were no longer welcomed.<sup>31</sup> Nepal and Romania are two countries that have attempted to stop trafficking by restricting women's mobility between nations.<sup>32</sup> This is done by criminalizing the migration of women including limiting the attainment of visas and passports.<sup>33</sup>

Some countries have instituted legislation and programs that concern the trafficking of women and assistance after rescue. Belgium has a 45-day rest period within which victims can press charges against their traffickers.<sup>34</sup> The victims are allowed three months of temporary residence with social benefits if unable to find employment.<sup>35</sup> Belgium has also established shelters for victims of trafficking.<sup>36</sup> The Philippines, a country of origin,<sup>37</sup> is increasingly forming measures to ensure that migrant women are better equipped through working skill development, so that they do not fall into prostitution and trafficking.

The United States has recently expanded its immigration laws to allow victims of trafficking to obtain visas and stay in the United States, and expand the prosecution of traffickers.<sup>38</sup> In

---

<sup>29</sup> *Id.* at 27. In July of 1999, in Bangladesh, women were taken to a home for vagrants, after being rescued at a raid. The women were then physically and sexually abused in the home.

<sup>30</sup> Shannon, *supra* note 5, at 126.

<sup>31</sup> *Id.*

<sup>32</sup> Coomaraswamy, *supra* note 11 at 17.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 30.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* A country of origin is one in which women are originally lured, kidnapped or bought.

<sup>38</sup> Ashcroft Introduces 'T Visa' For Issuance To Victims Of Human Trafficking, The White House Bulletin January 24, 2002, Section: In The White House And Around Town.

Florida, the U.S. Attorney's Office successfully prosecuted fifteen members of the Cadena family, which maintained 23 trafficked women in slave-like conditions forced to work for the sex industry for a \$2,000 smuggling fee.<sup>39</sup> The women were misled into believing that they were going to work as nannies and domestic workers.<sup>40</sup> After being convicted, the traffickers were sentenced to 15 years in prison and ordered to pay restitution to the women in the amount of one million dollars.<sup>41</sup> The Turkish President, who attempted to stop law enforcement agencies from assisting traffickers, in 1997 spoke out and directly implicated police in participating in the widespread cases of prostitution in the country.<sup>42</sup>

All countries have some responsibility in increasing prevalent human trafficking by either furthering the efforts of traffickers or by inaction which allows traffickers to continue the cycle of abuse and enslavement. The increased awareness and responsibility that many countries have shown is a welcomed assistance to the human trafficking victims and the global community. Although criminal convictions of women will not stop the trafficking, neither will the legalization of prostitution as evident from the problems of Australia where legal prostitution furthered the human trafficking.<sup>43</sup> Nations that supply the trafficked victims and nations that receive them must affect changes in demand for the services in order to curtail the industry. Furthermore, nations must further patrol their borders to stop the traffickers from entering and exiting the country. Finally, nations must assist each other economically and with employment opportunities as well as dissemination of information for potential

---

<sup>39</sup> Hyland, *supra* note 2, at 42.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Shannon, *supra* note 5. President Saparmurad Niyazov.

<sup>43</sup> See Mary Sullivan and Sheila Jeffreys, *Legalising Prostitution is Not the Answer: The Example of Victoria, Australia*, Coalition Against the Trafficking of Women in Australia, at <http://mc2.vicnet.net.au/users/catwaust/myfiles/legalisingprostitution.htm>.



victims and current victims.<sup>44</sup> Prevention and cooperation between countries is important to reduce trafficking numbers, however, a change in the images of women and their treatment would further control the demand.

---

<sup>44</sup> See Recommendations in Coomaraswamy, *supra* note 11, at 33; Raymond, *supra* note 1, at 216-221.